

1 WILDE & ASSOCIATES  
Gregory L. Wilde, Esq.  
2 Nevada Bar No. 004417  
208 South Jones Boulevard  
3 Las Vegas, Nevada 89107  
4 Telephone: 702 258-8200  
bk@wildelaw.com  
5 Fax: 702 258-8787

Electronically Filed on \_\_\_\_\_

6 Attorneys for BAC Home Loans Servicing, L.P.  
fka Countrywide Home Loans Servicing L.P.  
7

8 **UNITED STATES BANKRUPTCY COURT**  
9 **DISTRICT OF NEVADA**

10 In Re:

BK-S-09-24048 MKN

11 MANUAL G GUTIERREZ  
12 ADELA R GUTIERREZ

Date: January 14, 2010  
Time: 2:30pm

Chapter 13

13 Debtors.

14  
15 OPPOSITION TO MOTION TO VALUE DEBTORS' NON-PRINCIPAL RESIDENCE REAL  
16 PROPERTY, TO MODIFY THE RIGHTS OF PARTIALLY SECURED AND WHOLLY  
UNSECURED LIENHOLDERS AND OBJECTION TO LIENHOLDERS' PROOF(S) OF  
17 CLAIM, IF ANY

18 COMES NOW, BAC Home Loans Servicing, L.P. fka Countrywide Home Loans Servicing L.P.  
(Hereinafter "Secured Creditor") and files this Opposition stating as follows:

19 Secured Creditor is the first deed of trust holder on 1309 Checkmark Avenue, North Las Vegas,  
20 Nevada, 89032, (hereinafter "subject property"), and is owed over \$313,000.00. Prior to the Court  
21 reducing the lien to \$177,309.00, (resulting in a \$136,679.51 loss), the Court should allow Secured  
22 Creditor to 1) obtain its own valuation of the subject property and 2) conduct limited discovery to verify  
23 that the Debtors are being truthful with the Court as detailed below.  
24  
25  
26

1 Secured Creditor asserts that the subject property, 1309 Checkmark Avenue, North Las Vegas,  
2 Nevada, 89032, should be treated as the Debtors' personal residence and not subject to a lien-strip of  
3 any kind pursuant to 11 USC 1322.

4 The Debtors claims in question 15 of their Statement of Financial Affairs that they have not lived  
5 anywhere else but 2612 Fallow Field Terrace, Henderson, NV 89052 for the three years immediately  
6 prior to this bankruptcy filing. This case was filed on August 3, 2009, meaning that the Debtors failed to  
7 move in to the subject property upon purchase and have resided in the Fallow Field property since  
8 August 3, 2006.

9 The Debtors did not list a lease he might have with the "unkown" occupants of the subject  
10 property in his Schedule "G". (See exhibit "A"). Secured Creditor would like an opportunity to see a  
11 copy of any leases the Debtors have concerning the subject property.

12 Presuming that the Debtors moved out of the subject property prior to his bankruptcy, Secured  
13 Creditor asserts that it was not the intent of Congress to allow a debtor to move out of its residence  
14 during the life of a plan to circumvent the prohibitions of modifying a debt secured by a residence. See  
15 11 USC 1322(c)(2). There are too many unanswered questions in the Debtors' attempt to treat the  
16 subject property as a rental and strip a large portion of Secured Creditor's interest in the same.

17 Finally, Secured Creditor disputes the \$177,309.00 valuation of the property. If the Court is  
18 inclined to allow the Debtors to go forward, Secured Creditor asks for some time to obtain its own  
19 appraisal and find out the information listed above.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26

1 WHEREFORE, Secured Creditor asks that this Court deny the requested relief.

2 DATED this 7<sup>th</sup> day of December, 2009.

3 WILDE & ASSOCIATES

4 By /S/GREGORY L. WILDE

5 GREGORY L. WILDE, ESQ.

6 Attorneys for Secured Creditor

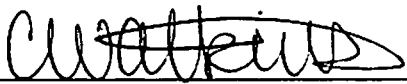
7 208 South Jones Boulevard  
8 Las Vegas, Nevada 89107

9 Certificate of Facsimile

10 I certify that on December 7, 2009, I served a copy of the foregoing opposition on Debtors'

11 Counsel by facsimile as follows:

12 Jorge L. Sanchez, Esq.  
13 Sanchez Law Group, Ltd.  
14 Fax No.

15   
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

B6G (Official Form 6G) (12/07)

In re **Manuel G Gutierrez,  
Adela R Gutierrez**

Case No. \_\_\_\_\_

Debtors

## **SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code,  
of Other Parties to Lease or Contract

Description of Contract or Lease and Nature of Debtor's Interest.  
State whether lease is for nonresidential real property.  
State contract number of any government contract.

0

continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases